

DEPARTMENT OF STATE REVENUE

04-20170153R.MOD

Memorandum of Decision: 04-20170153R
Sales Tax
For Tax Period Ending May 31, 2013

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Business provided sufficient documentation to establish that sales tax at issue in a refund claim was paid by business to its exempt customer. Since the customer was exempt from paying sales tax and since Business refunded the previously collected sales tax to that customer, the purchases at issue were not subject to sales tax and refund to Business is appropriate.

ISSUE

I. Sales Tax—Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-8; IC § 6-8.1-9-1; IC § 6-2.5-6-14.1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is an out-of-state business with operations in Indiana. Taxpayer filed a claim for refund of sales tax it collected from one customer in May of 2013 on purchases of tangible personal property ("TPP"). Taxpayer claimed that its customer qualified for the resale exemption on the purchase of the TPP. After review, the Indiana Department of Revenue ("Department") denied the claim on the basis that Taxpayer had not supplied sufficient documentation to grant the claimed refund. Taxpayer later refiled the claim. The Department then denied the claimed refund on the basis that it was filed past the statute of limitations for claiming a refund. Taxpayer protested both denials of the claim for refund. An administrative hearing was held and this Memorandum of Decision results. Further facts will be supplied as required.

I. Sales Tax—Refund.

DISCUSSION

Taxpayer protests the Department's denial of its claim for refund of sales tax which it had collected from its customer in May of 2013. The Department denied the claim after determining that there was insufficient documentation supplied to verify either that Taxpayer's customer was exempt or that Taxpayer had refunded the amount at issue to its customer. Taxpayer refiled the claim for refund along with additional documentation supporting its claim. The Department then denied the claim on the basis that the claim with additional supporting documentation had been filed past the statutory deadline for claiming a refund. Taxpayer states that it believed the refiled claim with additional documentation to be a continuation of the original filing, since it had been in contact with the Department after the initial denial regarding the claim and the type of documentation which would be required.

As an initial point, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

Next, IC § 6-2.5-5-8(b) provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Next, IC § 6-8.1-9-1(a) provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

Also, the Department refers to IC § 6-2.5-6-14.1, which states:

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

In this case, Taxpayer states that its customer purchased the TPP for resale. In the course of the refund claim and administrative protest process, Taxpayer provided sufficient documentation to establish that its customer was in the business of reselling the TPP in question without changing the form of the property, as required to qualify for the exemption provided by IC § 6-2.5-5-8(b). Taxpayer also provided sufficient documentation to establish that it refunded the amount of sales tax at issue to its customer as required by IC § 6-2.5-6-14.1 for it as the retail merchant to claim a refund of the sales tax itself. Finally, since the initial refund request was filed within the three year deadline established under IC § 6-8.1-9-1(a) and since Taxpayer continued discussions with the Department regarding the level of documentation required, the second refund request was an unnecessary refiling of the initial refund claim and the statute of limitations had not expired. Therefore, Taxpayer has established that it met the requirements to receive a refund of the sales tax which it refunded to its exempt customer.

FINDING

Taxpayer's protest is sustained.

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